APPEAL NO. 170277
FILED MARCH 22, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 22, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury sustained on (date of injury), does not extend to a medial meniscus posterior horn and body horizontal cleavage tear with femoral surface tearing of the posterior body of the right knee; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 18, 2016; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The claimant contends that the hearing officer's decision is not supported by a preponderance of the evidence. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury at least in the form of a right knee sprain/strain. The claimant testified he injured his right knee when walking up a flight of stairs at work.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury sustained on (date of injury), does not extend to a medial meniscus posterior horn and body horizontal cleavage tear with femoral surface tearing of the posterior body of the right knee is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

MMI

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that

the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

In her discussion of the evidence the hearing officer noted that after examining the claimant, the designated doctor provided a persuasive analysis as to why he placed the claimant at MMI on April 26, 2016, with a zero percent IR. In evidence is a Report of Medical Evaluation (DWC 69) from the designated doctor, (Dr. B), along with his narrative report. Dr. B examined the claimant on June 10, 2016, and certified that the claimant reached MMI on April 26, 2016, with a zero percent IR. In his narrative report, Dr. B stated the claimant presented with normal neurovascular and motor findings at follow-up after cortisone injection and usage of orthopedic knee brace, therefore the date of MMI is placed at April 26, 2016.

However, in Finding of Fact No. 4, the hearing officer found that the April 18, 2016, date of MMI by the designated doctor is not contrary to the preponderance of the other medical evidence. The hearing officer inadvertently stated the date of MMI assessed by Dr. B, the designated doctor, was April 18, 2016. In Conclusion of Law No. 4, and in her decision, as well as the decision and order paragraph on the first page, the hearing officer determined that the claimant reached MMI on April 18, 2016. The evidence establishes that Dr. B assessed the claimant reached MMI on April 26, 2016. There is no certification from Dr. B or any other doctor in evidence that assessed the claimant reached MMI on April 18, 2016. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on April 18, 2016, as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We render a new decision that the claimant reached MMI on April 26, 2016, to conform to the evidence. [1]

SUMMARY

We affirm the hearing officer's determination that the compensable injury sustained on (date of injury), does not extend to a medial meniscus posterior horn and body horizontal cleavage tear with femoral surface tearing of the posterior body of the right knee.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

[1] We note the parties mistakenly stipulated that Dr. B certified the claimant reached MMI on April 18, 2016.

We reverse the hearing officer's determination that the claimant reached MMI on April 18, 2016, and render a new decision that the claimant reached MMI on April 26, 2016, to conform to the evidence.

The true corporate name of the insurance carrier is **CITY OF EL PASO (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MAYOR OF THE CITY OF EL PASO
300 NORTH CAMPBELL STREET
EL PASO, TEXAS 79901.

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge